MGN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1996 OF 2007

M/s.M.J. Exports Pvt. Ltd.....Petitioner

Vs.

Commissioenr of Income-tax-3 & Ors....Respondents

Dr. K.Shivram with Mr. A.R.Singh and Mr. S.S. Karkela for the Petitioner
Mr. B.M. Chatterji with Mrs. P.P. Bhosale for the Respondents.

CORAM: F.I. REBELLO &
J.P.DEVADHAR,JJ.
DATED: 20th September,2007

P.C.:

. Rule. Heard forthwith.

2. The petitioner has approached this Court against the order dated 28th March, 2007 whereby the Commissioner of Income-tax-3 firstly held that the petitioner had not shown sufficient cause for condoning the delay in applying under the provisions of Section 267 of the Income Tax Act. After holding that the delay cannot be condoned went on to observe that even on merits the petition is not maintainable on the ground that the assessee had filed an Appeal before High Court.

3. On behalf of the Petitioner it is contended that the Appeal filed in the High Court for the

assessment year 1997-98 was in respect of Section 115JA of the Income-tax and not in respect of the present subject matter. It is further submitted that in so far as the present order was concerned, an Appeal was preferred, but that was held to be not maintainable. Reliance is placed also on the Board's Circular No.367 dated 26th July, 1983.

4. Considering the above and without going into the issue as to whether the Revision as filed is maintainable or not in our opinion the cause shown would amount to sufficient cause as the petitioner herein was bonafide prosecuting the proceedings before another forum. Hence the delay in preferring the Revision Application is condoned.

5. The Commissioner of Income-tax to decide the Revision Application according to law. All questions are left open for consideration before the Commissioner. Consequently the impugned order is set aside in terms of what is aforestated. Rule made absolute accordingly. There shall be no order as to costs.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**